Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
@ Communications, Inc.	)	CC Docket No. 02-4
Petition for Declaratory Ruling	)	
	)	

COMMENTS OF BELLSOUTH

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. and its wholly owned affiliated companies ("BellSouth"), submits these comments in response to the Common Carrier Bureau's *Public Notice* (DA 02-164), released on January 18, 2002 in the above referenced proceeding.

I. INTRODUCTION

1. As BellSouth understands this issue, it involves the situation where a CLEC has decided to aggregate all of its incoming traffic (traffic to be terminated by the CLEC) to a single point of interconnection ("POI") in a LATA. If the POI happens to be in the same local calling area where a call originates and terminates, there is no dispute that BellSouth will pay the transport costs associated with hauling the BellSouth-originated traffic to the CLEC's POI. The dispute arises when the POI is located in a local calling area *other than* the local calling area where the call originates and terminates. In that instance, BellSouth is forced to haul the BellSouth-originated traffic out of the local calling area where the call originates and terminates. Because BellSouth's end-user pricing was not based on this extra cost incurred in transporting a call out of the local calling area, BellSouth contends that it should be compensated for this

transport function.[1] Otherwise, BellSouth is subsidizing the CLEC's network configuration, which is developed to maximize cost efficiency to the CLEC's end-users, not BellSouth's end-users.

2. As a preliminary matter, BellSouth questions the administrative efficiency of the Commission considering this issue in the context of a Petition for Declaratory Ruling ("Petition") when the same issue is already before the Commission in a separate docket.[2] Further, nothing in the Petition remotely suggests that the state regulatory commissions have not been diligent in dealing with this issue in the course of §252 arbitration proceedings.[3] Notwithstanding, @ Communications seeks to challenge, under the guise of a declaratory action, a number of §252 arbitration decisions rendered by the North Carolina Utilities Commission ("NCUC") regarding the financial responsibility for transport costs on the originating carrier's side of the POI. BellSouth submits that the Commission should not allow @ Communications to use the Commission as a forum to collaterally attack North Carolina state regulatory policy.

3. If, however, the Commission decides that this forum is the appropriate venue to consider the POI issue, then BellSouth respectfully requests that the Commission consider, in addition to these Comments, the testimony of BellSouth witness John Ruscilli that was filed in

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[1] Historically, if BellSouth hauled a call out of the end-user's local calling area, BellSouth was entitled to either originating toll or originating access, which reimbursed BellSouth for the cost of transporting the call out of the local calling area.

[2] *See*, Notice of Proposed Rulemaking, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, 16 FCC Rcd 9610, 9650-52, ¶¶ 112-14 (2001). ("NPRM"). BellSouth notes that interested parties filed Comments in the NPRM on August 21, 2001 and Reply Comments on November 5, 2001.

[3] With one exception, this issue has been considered, or is under consideration, by every state regulatory commission in BellSouth's service territory.

the North Carolina BellSouth/Sprint §252 Arbitration.[4] (The relevant portions of Mr. Ruscilli's testimony are attached hereto as Attachment A.)

II. THIS PETITION IS NOTHING MORE THAN A COLLATERAL ATTACK ON PRIOR RULINGS OF THE NORTH CAROLINA UTILITIES COMMISSION

4. This Petition is not simply a request for rule interpretation as @ Communications contends. (Petition, ¶ 11) Instead, this Petition is a collateral attack on a number of §252 arbitration decisions issued by the North Carolina Utilities Commission ("NCUC"). While @ Communications references only the BellSouth/Sprint Arbitration Order,[5] the NCUC reached identical conclusions on the POI issue in the BellSouth/AT&T Arbitration Order[6] and in the BellSouth/MCI Arbitration Order.[7] (The relevant portions of the referenced NCUC Arbitration Orders are attached hereto as Composite Attachment B.)

5. In citing to the BellSouth/Sprint Arbitration Order, @ Communications implies, through selective citation, that the NCUC "had suggested that FCC resolution was proper in the other matter as well" (referring to the BellSouth/Sprint Arbitration Order). (Petition, ¶ 21) This

[4] *In the Matter of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-294, Sub 23 ("BellSouth/Sprint §252 Arbitration").

[5] Recommended Arbitration Order, *In the Matter of Sprint Communications Company, L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Docket No. P-294, Sub 23, dated July 5, 2001 ("BellSouth/Sprint Arbitration Order").

[6] Recommended Arbitration Order, *In re Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc.*, Docket No. P-140, Sub 73, dated March 9, 2001 ("BellSouth/AT&T Arbitration Order").

[7] Recommended Arbitration Order, *In re Petition of MCImetro Access Transmission Services, L.L.C. for Arbitration of Proposed Agreement with BellSouth Telecommunications, Inc.*, Docket No. P-474, Sub 10, dated April 3, 2001 ("BellSouth/MCI Arbitration Order").

implication by @ Communications is simply wrong. In fact, after discussing the interplay between the Telecommunications Act, Commission Rules and Orders, and federal case law, the NCUC was secure in its reasoning and analysis:

> The Commission is of the opinion that there is no case or principle that is legally dispositive of the result on this issue. Rather, the law allows, and the greater equity demands, that, if Sprint interconnects at points within the LATA but outside BellSouth's local calling area from which traffic originates, Sprint should be required to compensate BellSouth for, or otherwise be responsible for, transport beyond the local calling area. The Commission believes that this holding does not violate any FCC rule or case law and that is more equitable than not and in the greater public interest. (BellSouth/Sprint Arbitration Order, p. 22)
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> Lastly, the Commission suggests that Sprint might want to seek clarification of this issue from the FCC, since the FCC has in fact recently solicited comments on this issue (See Notice of Proposed Rulemaking, CC Docket No. 01-92, issued April 27, 2001, ¶¶112-114). This is a further indication to the Commission that the proposition that the CLP should bear no transport costs in this context is less obvious than some parties believe. (BellSouth/Sprint Arbitration Order, p. 23)

Obviously, the reference to clarification from this Commission is in the context of Sprint filing comments in the Notice of Proposed Rulemaking in CC Docket No. 01-92, not any request by the NCUC for assistance from this Commission in reaching a decision in the arbitration. It is noteworthy that Sprint, AT&T and MCI did not seek clarification of the POI issue from this Commission.

6. In short, @ Communications is using this Petition as a means to avoid the application of North Carolina regulatory policy to a complaint filed in North Carolina requesting an interpretation of a North Carolina interconnection agreement. BellSouth submits that this Commission should be wary of substituting its policy positions on local interconnection in place of a state commission. If @ Communications believes that the NCUC's policy is contrary to the

law, then @ Communications should obtain a decision from the NCUC that can then be appealed to federal court.

III. FEDERAL COURTS HAVE UPHELD STATE REGULATORY POLICIES, SUCH AS THE ONE ADOPTED BY THE NCUC, REGARDING FINANCIAL RESPONSIBILITY FOR TRANSPORT COSTS ON THE ORIGINATING CARRIER'S SIDE OF THE POI.

7. In its Petition, @ Communications seems to suggest that it does not have to consider any economic impacts to the originating carrier in determining where to locate their single POI in the LATA. This argument is similar to an argument raised before the United States District Court for the District of Arizona. *See US West v. Jennings*, 46 F.Supp.2d 1004, 1021 (D. Ariz. 1999). In that case, the Court reviewed the Arizona Commission's decisions on the POI issue in ten consolidated arbitration proceedings. The Arizona Commission acknowledged that in at least one of those ten proceedings, it had considered "only whether interconnection was physically possible at the requested location." *Id.* at 1021. The Arizona Commission "ignored other factors such as the cost to [the incumbent] of establishing only a single point of interconnection, because the [Commission] assumed it could not consider those factors." *Id.* The Court, however, ruled that:

> In determining whether a CLEC should establish more than one point of interconnection in Arizona, the [Arizona Commission] may properly consider relevant factors, including whether a CLEC is purposely structuring its point(s) of interconnection to maximize the cost to the ILEC or to otherwise gain an unfair competitive advantage. The purpose of the Act is to promote competition, not to favor one class of competitors at the expense of another.

Id.

8. Significantly, the Arizona court determined that, "[a]s an alternative, the [Arizona Commission] may require a CLEC to compensate [the incumbent] for costs resulting from an inefficient interconnection." *Id.* The Court concluded its discussion of this issue by noting that

"[i]t would be ironic if a law designed to promote a market-driven economy in local telephone service were instead interpreted to prohibit the consideration of cost when making decisions and thereby subsidize and reward inefficient behavior by market participants." *Id.* at 1022.

9. More recently, the United States Court of Appeals for the Third Circuit considered this issue in *MCI Telecommunications Corporation, et al. v. Bell Atlantic-Pennsylvania, et al.*, 271 F.3d 491 (3d Cir. 2001). This appeal of a Pennsylvania Public Utilities Commission arbitration decision concerned a number of interconnection and pricing issues, including the Pennsylvania Commission's decision that MCI can be required to interconnect at more than one point in the LATA. The Court concluded that:

> The PUC's requirement that Worldcom interconnect at these additional points is not consistent with the Act. We will affirm the District Court's decision, rejecting the PUC's interconnection requirements. To the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom. *See 11 F.C.C.R. 15499 P 209 (1996).*

Id. at 518.

10. Clearly, the NCUC agreed that Sprint was within its rights to establish a single POI in the LATA (*See*, BellSouth/Sprint Arbitration Order, p. 21 "In this case, technical feasibility is not an issue, as the parties agree that Sprint's proposal to establish one POI per LATA is technically feasible . . . ."). It was the additional costs imposed upon BellSouth resulting from the single POI that concerned the NCUC. Ultimately, the NCUC concluded that the law allowed and equity demanded that Sprint bear the costs associated with Sprint's expensive interconnection. Such a shifting of costs is consistent with the federal court rulings discussed above.

IV. UNDER THE COMMISSION'S RULES AND ORDERS, AN INCUMBENT IS ONLY REQUIRED TO DELIVER ITS ORIGINATING TRAFFIC, WITHOUT CHARGE, TO A POINT OF INTERCONNECTION THAT IS LOCATED WITHIN THE LOCAL CALLING AREA IN WHICH THE TRAFFIC ORIGINATED.

11. In support of its Petition, @ Communications cites the Commission's TSR Wireless Order, which addresses the POI issue in the context of CMRS traffic. *See* Memorandum Opinion and Order, *In the Matter Of TSR Wireless, LLC. v. US West*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18 (June 21, 2000). Because this decision pertains to network configurations and exchange of traffic between wireline and wireless carriers, it is not germane to the issue presented by @ Communications in this proceeding. Further, recent Commission decisions in the Mountain Communications[8] and Texcom[9] cases cast serious doubt on the accuracy of @ Communications' interpretation of the TSR Wireless Order.

12. In its Petition, @ Communications cites Rule 51.703(b) as authority for its position. Accepting @ Communications' limited construction of Rule 51.703(b) would lead to absurd results. For instance, Mississippi is a single-LATA state in BellSouth's service territory. Assume that a CLEC has a POI in the northern part of the state, and a single customer in the southern end of the state that has high-volumes of inbound traffic. In that scenario, it makes more sense for the CLEC to run long loops to that single customer rather than put in a new

[8] Memorandum Opinion and Order, *Mountain Communications, Inc. v. Qwest Communications International, Inc.*, File No. EB-00-MD-017 released February 4, 2002.

[9] Memorandum Opinion and Order, *Texcom, Inc. d/b/a Answer Indiana v. Bell Atlantic Corp., d/b/a Verizon Communications*, FCC 01-347, released November 28, 2001.

switch in the southern part of the state.[10] The inequity that would result from BellSouth having to pay for transport costs across the entire state of Mississippi makes @ Communications' interpretation of Rule 51.703(b) unconscionable. Further, there is no rule that requires CLECs to have a POI in every LATA; such a limitation is necessitated where an incumbent is precluded by law from providing interLATA services. Therefore, taking @ Communications' argument to its extreme, once incumbents are allowed to provide interLATA services, there would be nothing to preclude @ Communications from setting up a single POI for a region, or for the entire country, and requiring the incumbents to haul traffic, at the incumbents' expense, to that one POI. Thus, Rule 51.703(b) cannot reasonably be read to encompass the situation where traffic that originates and terminates in the same local calling area is routed to a CLEC POI outside of that local calling area.

13. Additionally, @ Communications' interpretation of Rule 51.703(b) cannot be read in a manner consistent with paragraph 199 of the Commission's Local Competition Order, wherein the Commission determined that a carrier requesting an expensive interconnection would be required to pay for that interconnection. There is no argument that establishing a POI outside of the local calling area in which a call originates and terminates is a more expensive interconnection as to the originating carrier. Accepting @ Communications' interpretation of Rule 51.703(b) would render paragraph 199 of the Commission's Local Competition Order meaningless.

[10] The cost of leasing or building transport facilities is much cheaper than the cost of a new switch, especially when the switch would be underutilized for just one, or even a few, customers. The problem is exacerbated by the possibility that the CLEC could lose the customer resulting in the switch becoming dormant.

14. Perhaps the most instructive decision on this issue is the Commission's recent Verizon Pennsylvania §271 Order.[11] In discussing the single POI and financial responsibility for Verizon transporting traffic out of the local calling area, the Commission noted:

> The issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM.* [FN omitted] We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single *physical* point of interconnection per LATA. [FN omitted] Because the issue is open in our *Intercarrier Compensation NPRM,* we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act. [FN omitted]

Verizon Pennsylvania §271 Order at 17474-75, ¶ 100. Clearly, @ Communications' request for a Commission declaration that the NCUC's policy violates existing Commission rules should be rejected.

V. CONCLUSION

15. There is no Commission Rule or Order that conflicts with the NCUC's policy of requiring the CLEC to be financially responsible for transport costs when the CLEC establishes a POI outside of the local calling area where a call originates and terminates. The NCUC's policy is consistent with federal case law, the Act, and the Commission's Rules and Orders. There has been no showing by @ Communications to justify the Commission declaring the regulatory policy set by the NCUC to be in violation of existing Commission rules.

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[11] Memorandum Opinion and Order, *In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, 16 FCC Rcd 17419 (2001). ("Verizon Pennsylvania §271 Order").

Respectfully submitted,

BELLSOUTH CORPORATION

By: ______________________________
E. Earl Edenfield Jr.
Richard M. Sbaratta

Its Attorneys

Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375-0001
(404) 335-0763

Date: February 19, 2002

BELLSOUTH TELECOMMUNICATIONS, INC.

DIRECT TESTIMONY OF JOHN A. RUSCILLI

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-294, Sub 23

SEPTEMBER 22, 2000

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS ADDRESS.

A. My name is John Ruscilli. I am employed by BellSouth as Senior Director for State Regulatory for the nine-state BellSouth region. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I attended the University of Alabama in Birmingham where I earned a Bachelor of Science Degree in 1979, and a Master's Degree in Business Administration in 1982. After graduation I began employment with South Central Bell as an Account Executive in Marketing, transferring to AT&T in 1983. I joined BellSouth in late 1984 as an analyst in Market Research, and in late 1985 I moved into the Pricing and Economics organization with various responsibilities for business case analysis, tariffing, demand analysis and price regulation. I served as a subject matter expert on ISDN tariffing in various end users, there is no requirement to offer such services for resale at the wholesale discount.

- In addition, Sprint has the option of purchasing for resale, at the prevailing resale discount rate, BellSouth's local service, including any optional services that also require local service dial tone. In doing this, Sprint becomes the customer's provider of local services, therefore, competing with BellSouth.
- Lastly, Sprint can buy UNEs and Sprint can avail itself of BellSouth's UNE Platform ("UNE-P") offering for existing customers. With this option, Sprint can become the facility provider at substantially less than the retail price. With the purchase of UNEs, Sprint can provide any service it chooses, in competition with BellSouth.

Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH REGARD TO ISSUE NO. 2?

A. BellSouth requests the NCUC to confirm the FCC's rules and deny Sprint's request that BellSouth make stand-alone Custom Calling Services, that are not available on a stand-alone basis to its non-carrier end-users, available to Sprint for resale.

Issue No. 7: Attachment 3, Interconnection, Section 2.8 – Point of Interconnection

Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

A. BellSouth understands this issue to be whether BellSouth is obligated to provide facilities for local calls outside of the local calling area, at no charge to Sprint.

Q. WHAT IS A POINT OF INTERCONNECTION?

A. The term Point of Interconnection is used in the Agreement, and in this issue, to describe the point(s) where BellSouth's and Sprint's networks physically connect. In its First Report and Order, at paragraph 176, the FCC defined the term "interconnection" by stating that:

> *We conclude that the term "interconnection" under section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic.*

Therefore, the term "Point of Interconnection" is simply the place, or places, on BellSouth's network where that physical linking of Sprint's and BellSouth's networks takes place. Simply speaking, the Point of Interconnection is the place where facilities that Sprint builds connect to facilities built by BellSouth.

Q. IN ESSENCE, WHAT IS THE NATURE OF THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?

A. The issue is pretty simple. BellSouth has a local network in each of the local calling areas it serves in North Carolina. BellSouth may have as many as 10, 20 or even more such local networks in a given LATA. Nevertheless, Sprint wants to interconnect its network with BellSouth's "network" in each LATA at a single point. This approach simply ignores that there is not one "network", but a host of networks that are, generally, all interconnected. Importantly, BellSouth does not object to Sprint designating a single Point of Interconnection at a point in a LATA on one of BellSouth's "networks", and Sprint only building its own facilities up to that point. Further, BellSouth does not object to Sprint using the interconnecting facilities between BellSouth's "networks" to have calls delivered or collected throughout the LATA. What BellSouth does want, and this is the heart of this issue, is for Sprint to be financially responsible when it uses BellSouth's network, in lieu of building its own network to deliver or collect these calls.

Sprint, to contrast its position with BellSouth's, expects BellSouth to collect its local traffic in each of BellSouth's numerous local calling areas in the LATA, and to be financially responsible for delivering calls, destined for Sprint local customers in each of those local calling areas, to a single point in each LATA. BellSouth agrees that Sprint can choose to build its own facilities to connect with BellSouth at a single, technically feasible, point in the LATA selected by Sprint. Sprint, however, cannot impose a financial burden on BellSouth to deliver BellSouth's originating traffic to that single point. If Sprint wants calls completed between BellSouth's customers and Sprint's customers using this single Point of Interconnection, that is fine, provided that Sprint is financially responsible for the additional costs that Sprint causes.

Q. DOES BELLSOUTH'S POSITION MEAN THAT SPRINT HAS TO BUILD A NETWORK TO EVERY LOCAL CALLING AREA, OR OTHERWISE

HAVE A POINT OF INTERCONNECTION WITH BELLSOUTH'S LOCAL NETWORK IN EVERY LOCAL CALLING AREA?

A. No. Contrary to the claims in Ms. Closz' testimony, Sprint can build out its network that way if it chooses. Sprint can pick any Point of Interconnection in the LATA that is technically feasible. It can choose to have one or more Points of Interconnection in the LATA. Sprint can lease facilities from BellSouth or any other provider to bridge the gap between its network (that is, where it designates its Point of Interconnection) and each BellSouth local calling area. However, Sprint cannot shift its financial responsibility to BellSouth, for carrying local calls, by choosing to have a single Point of Interconnection in each LATA.

I know of no reason for Sprint to believe that BellSouth would consider forcing "Sprint to build facilities to each BellSouth end office", because as far as I am aware, BellSouth has never suggested this in any negotiations with Sprint. BellSouth, certainly is not attempting to force Sprint to build facilities throughout the LATA (or to "potentially decrease the entrant's network efficiencies" Closz at p.6), as Sprint states. BellSouth does not require Sprint to duplicate BellSouth's network architecture. Sprint can configure its network in whatever manner it chooses. The issue here is not, however, how Sprint configures its network, but whether BellSouth will be compensated for hauling Sprint's traffic from one local calling area to another. Plainly, BellSouth is entitled to compensation under these circumstances.

Q. IF SPRINT CAN INTERCONNECT WITH BELLSOUTH'S NETWORK AT ANY TECHNICALLY FEASIBLE POINT, WHY IS THIS AN ISSUE?

A. Recall that what we are talking about is interconnection with "local networks." The network architecture of the two companies is very important, and is actually why this issue exists. BellSouth actually has a number of distinct networks. For example, BellSouth has local networks, long distance networks, packet networks, signaling networks, E911 networks, etc. Each of these networks is designed to provide a particular service or group of services. With regard to "local networks," BellSouth, in any given LATA, has several such local networks, usually interconnected by BellSouth's long distance network.

Most telecommunications companies structure their networks as a group of specialized networks. The important point is that for a customer to have a particular service, the customer must be connected to the network where that service is provided. Consequently, if a CLP wants to deliver or receive a particular kind of traffic from a BellSouth customer, the CLP must connect to the BellSouth network where that service is provided. For example, if a customer receives local service from BellSouth, that customer must be connected to the BellSouth local network in his *local calling area*. Likewise, if a CLP wants to deliver local traffic to, or receive local traffic from that customer, the CLP must be connected to that same local network.

Q, PLEASE FURTHER DESCRIBE BELLSOUTH'S LOCAL NETWORKS.

A. The geographic basis upon which customers purchase local service from BellSouth is a local calling area. BellSouth uses a local network to provide service within that local calling area. That local network has a number of local switches that switch local calls. These local switches are interconnected by facilities either directly, or through local tandem switches. These interconnected switches allow one customer to call any other customer located within that local calling area. BellSouth may have a number of such local networks, or calling areas, in a LATA.

For example, in the Raleigh LATA, BellSouth has local networks in Raleigh, Goldsboro, Chapel Hill, etc. Customers who want local service in a particular local calling area must be connected to the local network that serves that local calling area. Therefore, a customer who connects to the Raleigh local network will not also receive local service in the Goldsboro local calling area because Goldsboro is not in the Raleigh local calling area. Likewise, a CLP who wants to connect with BellSouth to provide local service in Goldsboro has to connect to the local network that serves the Goldsboro local calling area. These local calling areas, to which I am referring, have been defined over the years by this Commission.

Q. HOW WOULD SPRINT CONNECT TO BELLSOUTH'S LOCAL NETWORKS THAT ARE OUTSIDE THE LOCAL CALLING AREA WHERE SPRINT'S SWITCH IS LOCATED?

A. Sprint has agreed to establish at least one Point of Interconnection in each LATA. Sprint would build facilities from its switch to the Point of Interconnection in the LATA where the BellSouth local network is located. For the purpose of the following discussion, I will assume that Sprint has a single switch in Charlotte and elects to put a single POI in the Raleigh LATA and that POI will be at BellSouth's access tandem in Raleigh, which would be perfectly permissible. BellSouth has no problem with this arrangement. When Sprint chooses a single point in the Raleigh LATA to interconnect with BellSouth, this creates several different call scenarios. BellSouth's customers in Raleigh wanting to call Sprint's customers located in the BellSouth Raleigh local calling area could do so, and BellSouth would gladly transport the calls to the Raleigh tandem. BellSouth would be financially responsible for taking a call from one of its subscribers located in the Raleigh local calling area and delivering it to another point in the Raleigh local calling area, the Sprint Point of Interconnection.

That, of course, is not the problem. The problem is that Sprint wants BellSouth to provide facilities to serve all other local calling areas in the Raleigh LATA using that same single Point of Interconnection at the Raleigh tandem, at no charge to Sprint. Suppose a BellSouth end user in Goldsboro wants to call a Sprint end user in Goldsboro. The BellSouth customer picks up his or her telephone, and draws dial tone from BellSouth's Goldsboro switch. The BellSouth customer then dials the Sprint customer. The call is routed from Goldsboro to Sprint's Point of Interconnection in the Raleigh LATA, which is still collocated with the BellSouth access tandem in Raleigh.

BellSouth provides the facilities from a location on BellSouth's Goldsboro local network to Sprint's Point of Interconnection in Raleigh. Sprint then carries the call to its switch in Charlotte and connects to the loop serving its customer in Goldsboro.

Now, when a BellSouth customer in Goldsboro wants to call a Sprint customer in Goldsboro, Sprint wants BellSouth to be financially responsible for bringing the call from Goldsboro to Raleigh, over whatever facilities BellSouth has or can build between those two points, and hand the call off to Sprint in Raleigh. If Sprint only wants to build facilities to a single point on BellSouth's network in the Raleigh LATA, it may do so. Sprint can use that point to serve all of its customers in the Raleigh LATA. BellSouth's local network in Raleigh, however, does not extend to Goldsboro. Therefore, if Sprint also wants to provide local service in Goldsboro, Sprint must get to the local network in Goldsboro. If Sprint has chosen not to use its own facilities, Sprint can purchase facilities from BellSouth or another provider for that purpose. It is the financial responsibility for hauling the calls from a distant local calling area (Goldsboro) to Sprint's POI (Raleigh) that is the problem. Sprint is not entitled to a free ride over BellSouth's network from Goldsboro to Raleigh.

Q. HOW DOES BELLSOUTH PROPOSE TO DELIVER ITS ORIGINATING LOCAL TRAFFIC TO SPRINT?

A. Although not required to do so, BellSouth proposes to aggregate all of its customers' originated local traffic to a single location in a local calling area where such traffic will be delivered to Sprint. In the case of Goldsboro, for example, BellSouth would transport the local traffic originated by all BellSouth customers in the Goldsboro local calling area to a single location in the Goldsboro local calling area. This single location where BellSouth aggregates its customers' local traffic is not a Point of Interconnection as defined by the FCC, therefore, BellSouth is using the term Virtual Point of Interconnection ("VPOI") to describe that central location. Sprint can then pick up all local traffic that BellSouth's customers originate in the Goldsboro local calling area at a single location, rather than having to pick up the traffic at each individual end office. Sprint, however, is not required to pick up the traffic at that point. If Sprint chooses to do so, it can pick up the traffic at individual end offices instead of the VPOI designated by BellSouth.

Q. PLEASE EXPLAIN IN MORE DETAIL WHAT YOU ARE REFERRING TO AS A VIRTUAL POINT OF INTERCONNECTION.

A. The VPOI is the Point of Interconnection specified by BellSouth for delivery of BellSouth originated traffic to Sprint. Sprint would pay BellSouth the TELRIC rates for Interoffice Dedicated Transport and associated multiplexing, as set forth in the Interconnection Agreement, for BellSouth to transport local traffic and Internet traffic over BellSouth facilities from the VPOI to the POI designated by Sprint. The Interoffice Dedicated Transport mileage will be the airline mileage between the Vertical and Horizontal (V&H) coordinates of the VPOI and the Sprint POI. In addition, Sprint will compensate BellSouth for all associated multiplexing.

Q. WHY DO YOU SAY THAT SPRINT MUST BE FINANCIALLY RESPONSIBLE FOR THE TRANSPORT OF THESE CALLS FROM LOCAL CALLING AREAS THAT ARE DISTANT FROM THE POINT WHERE SPRINT HAS CHOSEN TO INTERCONNECT ITS NETWORK WITH BELLSOUTH'S?

A. First, that is the only approach that makes economic sense. I will explain the rationale for that statement later. Second, the Eighth Circuit determined that the ILEC is only required to permit a CLP to interconnect with the ILEC's existing local network, stating that:

> *The Act requires an ILEC to (1) permit requesting new entrants (competitors) in the ILEC's local market to interconnect with the ILEC's <u>existing local network</u> and, thereby, use that network to compete in providing local telephone service (interconnection)....* *(Eighth Circuit Court Order dated July 18, 2000, page 2) [Emphasis added.]*

This is a very important point. When Sprint interconnects with BellSouth's local network in Raleigh, it is not interconnecting with BellSouth's local network in Goldsboro. It is only interconnecting with the Raleigh local network. The fact that it is entitled to physically interconnect with BellSouth at a single point cannot overcome the fact that the single Point of Interconnection cannot, by itself, constitute an interconnection with every single local calling area in the LATA.

Moreover, if that were true, think of the implications. What happens when BellSouth gets into the long distance business in North Carolina and the LATA restrictions no longer exist? Sprint's theory would mean that Sprint could have a physical Point of Interconnection with BellSouth's "network" in Miami, and BellSouth would be required to haul local calls originating in Goldsboro and destined to terminate in Goldsboro all the way to Miami, at no cost to Sprint. It just doesn't make sense. Sprint can build whatever network it wants. It can interconnect with BellSouth's "network" wherever it is technically feasible. However, Sprint cannot shift the financial burden of its network design to BellSouth.

Q. CAN YOU ILLUSTRATE WITH AN EXAMPLE WHY YOU SAY SPRINT IS ATTEMPTING TO SHIFT ITS FINANCIAL RESPONSIBILITY TO BELLSOUTH AND THAT BELLSOUTH IS INCURRING COSTS ON BEHALF OF SPRINT?

A. Yes. The best way to describe these additional costs is to compare examples of two local calls in the Goldsboro local area. One local call is between two BellSouth customers. The other local call is between a BellSouth customer and a Sprint customer. Let's assume these two customers are neighbors in Goldsboro. First, let's examine what happens if both customers were served by BellSouth. The call originates with one customer, and is transported over that customer's local loop to a local switch in Goldsboro, where the call is connected to the other customer's local loop. Importantly, the call never leaves the Goldsboro local calling area. Therefore, the only cost BellSouth incurs for transporting and terminating that call is end office switching in Goldsboro.

Now, let's compare what happens when one of these two customers obtains its local service from Sprint. Assume that the BellSouth customer calls the Sprint customer next door. This assumption is just for simplicity of explanation; the effect is the same regardless of which customer originates the call. The BellSouth customer is connected to BellSouth's switch in Goldsboro. The BellSouth switch then sends the call to Raleigh because that is where Sprint told BellSouth to send the call. The call is then hauled over facilities owned by Sprint to Charlotte where Sprint connects the call through its end office switch to the long loop serving Sprint's end user customer back in Goldsboro. Again, these two customers live next door to each other. In one case the call never left the Goldsboro local calling area. In the other, BellSouth hauled the call all the way to Raleigh and the only reason that BellSouth did so was because that is what Sprint wanted.

To make the point more simply, Sprint wants BellSouth to eat the cost of the facilities used to haul the call I just described between Goldsboro and Raleigh. There is nothing fair, equitable or reasonable about Sprint's position.
BellSouth believes that Sprint, which has designed its network the way it wants, and designed that network in the way that is cheapest and most efficient for Sprint, must bear the financial responsibility for the additional facilities used to haul the call between Goldsboro and Raleigh. Sprint does not have to

build the facilities. It does not have to own the facilities. It just has to pay for them.

Q. DO BELLSOUTH'S LOCAL EXCHANGE RATES COVER THESE ADDITIONAL COSTS?

A. No. BellSouth, in theory, is supposed to be compensated, by the local exchange rates charged to BellSouth's local customers, for hauling local calls from one point within a specific local calling area to another point in that same local calling area. I say "in theory" because, as the Commission knows, there has always been a dispute about whether local exchange rates actually cover the costs of handling local calls. Certainly there can be no dispute that the local exchange rates that BellSouth's customers pay are not intended to cover and, indeed, cannot cover, the cost of hauling a local call from one Goldsboro customer to another Goldsboro customer by way of Raleigh.

Indeed, if Sprint is not required to pay for that extra transport which Sprint's network design decisions causes, who will pay for it? The BellSouth calling party is already paying for its local exchange service, and certainly will not agree to pay more, simply for Sprint's convenience. Who does that leave to cover this cost? The answer is that there is no one else, and because Sprint has caused this cost through its own decisions regarding the design of its network, it should be required to pay the additional cost.

Q. DOES BELLSOUTH RECOVER ITS COSTS FOR THESE INTERCONNECTION TRUNKS THROUGH RECIPROCAL COMPENSATION CHARGES?

A. No. The facilities discussed in this issue provide interconnection between the parties' networks. Their costs are not covered in the reciprocal compensation charges for transport and termination. Paragraph 176 of FCC Order No. 96-325 clearly states that interconnection does not include transport and termination: "Including the transport and termination of traffic within the meaning of section 251(c)(2) would result in reading out of the statute the duty of all LECs to establish 'reciprocal compensation arrangements for the transport and termination of telecommunications' under section 251(b)(5)". Reciprocal compensation charges apply only to facilities used for transporting and terminating local traffic on the local network, not for interconnection of the parties' networks.

In the Goldsboro example, reciprocal compensation would only apply for the use of BellSouth's facilities within the Goldsboro local calling area. That is, reciprocal compensation would apply to the facilities BellSouth uses within its Goldsboro local network to transport and switch a Sprint originated call. Reciprocal compensation does not include the facilities to haul the traffic from Raleigh to Goldsboro, for example. Further, BellSouth is paid reciprocal compensation only for calls that originate with a Sprint customer and terminate to a BellSouth customer. BellSouth does not receive reciprocal compensation for calls that originate from a BellSouth customer and terminate to a Sprint customer. Ultimately, what Sprint is requesting is for BellSouth to build facilities, at no charge, for calls in both directions.

Q. ON PAGE 6 OF MS. CLOSZ' TESTIMONY, SPRINT TALKS ABOUT ESTABLISHING THE POINT OF INTERCONNECTION "SO AS TO LOWER ITS COSTS"AND THAT THE INCUMBENT COULD "INCREASE ENTRANT'S COSTS AND POTENTIALLY DECREASE THE ENTRANT'S NETWORK EFFICIENCIES". PLEASE COMMENT.

A. Sprint equates efficiency with what is cheapest for Sprint. Of course, that is not an appropriate measure of efficiency. Indeed, to measure efficiency, the cost to each carrier involved must be considered. Presumably, Sprint has chosen its particular network arrangement because it is cheaper for Sprint. A principal reason that it is cheaper is because Sprint is expecting BellSouth's customers to bear substantially increased costs that Sprint causes by its network design. It simply makes no sense for BellSouth to eat the cost of hauling a local Goldsboro call outside the local calling area just because that is what Sprint wants us to do, so that Sprint can "lower its costs". Sprint, however, wants this Commission to require BellSouth to do just that. If Sprint bought these facilities from anyone else, Sprint would pay for the facilities. Sprint, however, does not want to pay BellSouth for the same capability.

Sprint's method of transporting local traffic shifts its costs to BellSouth and BellSouth's customers. Instead of encouraging competition, Sprint is asking BellSouth's customers to subsidize Sprint's network. Competition is supposed to reduce costs to customers, not increase them, regardless of whose customers they are. Competition certainly is not an excuse for enabling a carrier to pass increased costs that it causes to customers it does not even serve. BellSouth requests that the Commission require Sprint to bear the cost of hauling local calls outside BellSouth's local calling areas. Importantly, Sprint should not be permitted to avoid this cost by any of the principles or concepts that Sprint is proposing. Nor should Sprint be permitted to collect reciprocal compensation for facilities that haul local traffic outside of the local calling area.

Q. HOW HAS THE FCC ADDRESSED THE ADDITIONAL COSTS CAUSED BY THE FORM OF INTERCONNECTION A CLP CHOOSES?

A. In its First Report and Order in Docket No. 96-98, the FCC states that the CLP must bear the additional costs caused by a CLP's chosen form of interconnection. Paragraph 199 of the Order states that "a requesting carrier that wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), <u>be required to bear the cost of the that interconnection, including a reasonable profit</u>." Further, at paragraph 209, the FCC states that "Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must <u>usually compensate incumbent LECs for the additional costs incurred by providing interconnection</u>, competitors have an incentive to make economically efficient decisions about where to interconnect." (Emphasis added.)

Contrary to Sprint's claim of "increase[d] entrant's costs", it is clear that the FCC expects CLPs to pay whatever additional costs they cause ILECs to incur due to their interconnection. If Sprint is permitted to shift its costs to BellSouth, Sprint has no incentive to make economically efficient decisions about where to interconnect.

Q. WOULD SPRINT'S ABILITY TO COMPETE BE HAMPERED BY SPRINT'S INABILITY TO OBTAIN FREE FACILITIES FROM BELLSOUTH?

A. Absolutely not. First, Sprint does not have to build or purchase interconnection facilities to areas that Sprint does not plan to serve. If Sprint does not intend to serve any customers in a particular area, its ability to compete cannot be hampered.

Second, in areas where Sprint does intend to serve customers, BellSouth is not requiring Sprint to build facilities throughout the area. Sprint can build facilities to a single point in each LATA and then purchase whatever facilities it needs from BellSouth or from another carrier in order to reach individual local calling areas that Sprint wants to serve.

Third, any such claim is irreconcilable on its face. This is demonstrated by the example I earlier discussed at length. In that example, Sprint would provide loops from its Charlotte switch to each customer it has in Goldsboro.

Apparently, Sprint has chosen to design its network in this manner because it has determined that it is cheaper to construct facilities from Charlotte to Goldsboro than to install a switch in the Goldsboro local calling area. However, the quantity of facilities needed to connect from Charlotte to Goldsboro to serve these same customers is far less than the number of loops Sprint is willing to build. Numerous customers could be served over one of this type facility between Charlotte and Goldsboro. The cost of these transport facilities is much smaller than the cost of the loop facilities that Sprint believes is the more economical serving arrangement. So, paying the cost of these connecting facilities could not significantly hinder Sprint's ability to compete.

Fourth, all carriers must bear their own costs of interconnection. In this respect, Sprint would not be hindered from competing, as it would face the same choices, as would any carrier, with respect to arranging its network to minimize those costs.

Q. HOW HAS THE FCC ADDRESSED THE ISSUE OF WHO ESTABLISHES THE POINT OF INTERCONNECTION?

A. The FCC addressed this issue in its Local Competition Order, in Section IV - Interconnection. In that Section, the FCC determined that the originating company may determine its POI. For example, the FCC states in Subsection F, Technically Feasible Points Of Interconnection, ¶ 209:

We conclude that we should identify a minimum list of technically feasible points of interconnection that are critical to facilitating entry *by competing local service providers. Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.*

The ruling only specifies that the CLP must establish a POI on the incumbent LEC's network for traffic originated by the CLP. It does not obligate the incumbent LEC to specify a POI on the CLP's network for traffic originated by the incumbent LEC. BellSouth's position is that nothing in the Act limits BellSouth's ability to designate a POI for traffic it originates to Sprint.

Q. HOW HAS THE FCC ADDRESSED AN ILEC'S ABILITY TO DESIGNATE A POINT OF INTERCONNECTION FOR ITS ORIGINATING TRAFFIC?

A. The FCC permits the ILEC to designate the POI for its traffic, and does not require that point to be on the CLP's network. The FCC has determined that issues regarding the location of POIs should be determined through the negotiation and arbitration process. In the First Report and Order, the FCC rejected MCI's suggestion that the ILEC should be required to specify a single POI on a CLP's network for traffic originated by the ILEC's end user. In paragraph 214 of that Order, the FCC states:

> *MCI also urges the Commission to require incumbents and competitors to select one point of interconnection (POI) on the <u>other carrier's network</u> at which to exchange traffic. MCI further requests that this POI be the location where the costs and responsibilities of the transporting carrier ends and the terminating carrier begin. [Emphasis added.]*

In paragraph 220, the FCC rejected MCI's request, stating that:

> *We also conclude that MCI's POI proposal, permitting interconnecting carriers, both competitors and incumbent LECs, to designate points of interconnection on each other's networks, is at this time best addressed in negotiations and arbitrations between parties.*

Consistent with the FCC's Order, a CLP does not have the right to establish the POI for ILEC originated traffic.

Q. DOES THE ACT SPECIFICALLY ADDRESSED COMPENSATION FOR INTERCONNECTION?

A. Yes. The Act supports BellSouth's position on this issue. Specifically, 47 U.S.C. § 251(c)(2)(D) states:

> "(2) INTERCONNECTION.—The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—
>
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

Further, §252(d) addresses pricing standards. Section 252(d)(1) specifically, and separately, addresses the pricing for Interconnection. It hardly seems logical that Congress and the FCC would separately and expressly address interconnection if compensation were not appropriate.

Q. WHAT IS BELLSOUTH ASKING THIS COMMISSION TO DO WITH REGARD TO ISSUE NO. 7?

A. BellSouth requests the NCUC to find that Sprint is required to bear the cost of facilities that BellSouth may be required to install, on Sprint's behalf, in order to extend BellSouth's local network to Sprint's network. Further, BellSouth requests that the NCUC adopt BellSouth's proposed language for inclusion in the interconnection agreement between BellSouth and Sprint.

Issue No. 8: Attachment 3, Interconnection – Multi-jurisdictional traffic over any type trunk group

Q. WHAT IS BELLSOUTH'S UNDERSTANDING OF THIS ISSUE?

CERTIFICATE OF SERVICE

I do hereby certify that I have this 19th day of February 2002 served the following parties to this action with a copy of the foregoing **COMMENTS OF BELLSOUTH** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed below.

+ Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Room 5-B540
Washington, D.C. 20554

+ Qualex International
The Portals, 445 12th Street, S.W.
Room CY-B402
Washington, D.C. 20554

W. Scott McCollough
David Bolduc
@ Communications, Inc.
Stumpf Craddock Massey & Pulman
1801 North Lamar Blvd.
Suite 104
Austin, TX 78701

Debbie Smith

Debbie Smith

+ VIA ELECTRONIC FILING